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PROBATE CODE STUDY COMMISSION

Legislative Services Agency
200 West Washington Street, Suite 301
Indianapolis, Indiana 46204-2789
Tel: (317) 233-0696 Fax: (317) 232-2554

LSA Staff:

James Landers, Fiscal Analyst for the
Commission
Anne Haley, Attorney for the Commission

Authority: IC 2-5-16-2

MEETING MINUTES¹

Meeting Date: October 22, 2002
Meeting Time: 1:00 P.M.
Meeting Place: State House, 200 W. Washington St.,
156-B
Meeting City: Indianapolis, Indiana
Meeting Number: 2

Members Present: Rep. Ralph Foley; Sen. Joseph Zakas; Sen. Connie Lawson; Sen. Rose Antich; James Martin; Vincent Heiny; Terry Harris; Janet Ellis; Robert Christopher; Diane Bender; MaryEllen Kiley Bishop.

Members Absent: Rep. Robert Kuzman, Chairperson; Rep. John Aguilera; Cynthia Boll; John Chappell.

Rep. Foley convened the meeting at 1:15 p.m. The Commission considered the preliminary drafts relating to topics discussed at the previous meeting. (The preliminary drafts referenced in these minutes are available at the Legislative Information Center. See Footnote 1.)

PD 3418: Notice on Presumption of Death

Kerry Spradlin, representing the Indiana Bankers Association, indicated that the Association supports adoption of this PD. There was no Commission discussion on the PD. The Commission voted 9 to 0 to recommend the PD to the General Assembly.

PD 3531: Uniform Disclaimer of Property Interests Act

Mr. Jeff Kolb addressed the Commission regarding PD 3531 on behalf of the Probate, Trust, and Real Property Section of the Indiana State Bar Association ("Probate Section"). Mr. Kolb indicated that he, Gordon Wishard, and Gina Giacone had reviewed the PD and found that it

¹ Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.ai.org/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

needed several adjustments and clarifications before being introduced. Mr. Kolb indicated that these changes generally are not substantive. Mr. Kolb discussed problem areas and potential adjustments and clarifications, but he indicated that draft language was not yet available. The LSA Staff Attorney informed the Commission that the phrase “the introduced version of this bill was prepared by the Probate Code Study Commission” could not be placed in the synopsis of the bill unless the PD with the suggested changes was recommended by the Commission. Rep. Foley suggested that the PD in its present form be introduced with the suggested changes drafted as an amendment to the introduced bill. Mr. Kolb agreed to be responsible for getting the pertinent changes to the LSA Staff Attorney. The Commission voted 9 to 0 to recommend the PD to the General Assembly.

PD 3589: Uniform Health Care Decisions Act

Mr. Kolb requested that the Commission table the PD until next year because members of the Probate Section and other interested parties need more time to ensure that a functional proposal is crafted. There being no objection to this request, the PD was tabled by the Commission.

PD 3628: Uniform Custodial Trust Act

Mr. Kolb indicated that the PD contained new provisions that are similar to the existent Uniform Transfers to Minors Act except that the beneficiary of a custodial trust is an adult, who may or may not be disabled or incapacitated. Mr. Jim Martin commented that the PD is a good proposal allowing for a simplified type of trust that is an alternative to the formalities of establishing adult guardianship. He indicated that the custodial trust would likely be most appropriate for managing the assets of adults who are not wealthy. The Commission voted 9 to 0 to recommend the PD to the General Assembly.

PD 3632: Attestation/Self-proving Clause

Mr. Kolb commented that the members of the Probate Section preferred a second preliminary draft on this topic - PD 3633. There being no objection, PD 3632 was not considered by the Commission.

PD 3633: Attestation/Self-proving Clause

Upon Mr. Kolb's recommendation, the Commission approved changes to the PD. Kerry Spradlin, representing the Indiana Bankers Association, indicated that the Association supports adoption of this PD. There was no other public comment on the PD. The Commission voted 9 to 0 to recommend the PD to the General Assembly.

PD 3639: Total Return Unitrust

Ms. Cindy Wolfer addressed the Commission regarding PD 3639 on behalf of the Probate Section. Ms. Wolfer indicated that the PD arises due to concerns that the traditional rules governing the determination of income and principal under the Uniform Principal and Income Act could adversely impact the total return of a trust when investment choices are made to produce an income stream for a current income beneficiary. Ms. Wolfer indicated that this would allow for the trustee to pay an income beneficiary a set percentage of the account balance while investing trust assets for total return consistent with prudent investor standards. This, Ms. Wolfer indicated, would largely eliminate conflict between income beneficiaries and remaining beneficiaries seeking growth in the asset value of the trust. Ms. Wolfer recommended that Section 19, Subsection 4, of the PD be eliminated as the authorization contained in Subsection 4 is also contained in Section 20 of the PD. Without objection the

change was approved by the Commission.

Kerry Spradlin representing the Indiana Bankers Association, stated that the Association has taken a neutral stance on the proposal, but does have several issues with the current draft. She introduced Mr. Chris White, Vice President/Trust Counsel for Fifth-Third Bank and a member of the Indiana Bankers Association Task Force, to address these issues. Mr. White first pointed out that the phrase "outstanding interest obligations" used in the definition of "net fair market value" is not defined nor is it entirely clear what that phrase includes. He suggested substituting the phrase "liens, debts, and encumbrances." This change was approved by consent of the Commission. The Commission, upon Mr. White's suggestion, also consented to eliminate the definition of "prior valuation year" in Section 4 of the PD and use this language to elaborate on the term where it is used in Section 18 of the PD. Mr. White also suggested that the phrase "closely held enterprises" in Section 20 of the PD is ambiguous without a definition. After discussion, the Commission consented to deleting "interests in closely held enterprises" and replacing it with "asset for which the fair market value is not readily determinable". The Commission approved other changes to the draft for consistency. The Commission voted 9 to 0 to recommend the PD with the pertinent changes to the General Assembly.

Rep. Foley adjourned the meeting at 3:00 p.m.